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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

VARIAN ACONTE FRIGO,

Defendant and Appellant.

C039784

(Super. Ct. No. 01F2521)

A jury convicted defendant Varian Aconte Frigo of three felonies: unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a), count 1); concealing or withholding stolen property (Pen. Code, § 496, subd. (a), count 2);<sup>1</sup> and grand theft of personal property (§ 487, subd. (a), count 3). In a bifurcated proceeding, the trial court sustained six prior prison term enhancement allegations. (§ 667.5, subd. (b).)

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<sup>1</sup> Further unlabeled section references are to the Penal Code.

The court imposed an aggregate term of nine years eight months in state prison.

Defendant's sole claim on appeal is that the judgment must be reversed because the trial court instructed the jurors, pursuant to CALJIC No. 17.41.1, that they were obliged to report the misconduct of other jurors to the court. We shall affirm the judgment.

#### DISCUSSION

The trial court instructed the jury with CALJIC No. 17.41.1 as follows: "The integrity of a trial requires the jurors at all times during their deliberations to conduct themselves as required by these instructions. Accordingly, should it occur that any juror refuses to deliberate or expresses an intention to disregard the law, or to decide the case based on penalty or punishment, or any other improper basis, it is the obligation of the other jurors to immediately advise the court of the situation."

For various reasons, defendant argues it was error to give CALJIC No. 17.41.1. We must reject defendant's claim under *People v. Engelman* (2002) 28 Cal.4th 436, the much-awaited California Supreme Court case decided nine days after defendant filed his appellant's reply brief in this case. *Engelman* held that CALJIC No. 17.41.1 does not infringe on a defendant's jury trial rights under the federal and state Constitutions. (*Engelman*, at pp. 439-440.) It is of no consequence here that the Supreme Court, in the exercise of its supervisory power, directed that

CALJIC No. 17.41.1 should not be given in future trials.

(*Engelman*, at p. 449.)

DISPOSITION

The judgment is affirmed.

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CALLAHAN, J.

We concur:

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SCOTLAND, P.J.

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NICHOLSON, J.